

# **EXHIBIT L**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ELI MOR, derivatively on behalf of )  
AMERISOURCEBERGEN CORPORATION )  
and individually on behalf of himself and all )  
other similarly situated shareholders of )  
AMERISOURCEBERGEN CORPORATION, )

C.A No. 1:13-cv-00242-RGA

Plaintiff, )  
)

vs. )  
)

STEVEN COLLIS, RICHARD )  
GOCHNAUER, RICHARD GOZON, )  
EDWARD HAGENLOCKER, KATHLEEN )  
HYLE, MICHAEL LONG, HENRY MCGEE, )  
CHARLES COTROS, and JANE HENNEY, )

Defendants, )  
)

-and- )  
)

AMERISOURCEBERGEN CORPORATION, )  
a Delaware Corporation, )  
)

Nominal Defendant. )

**EXPERT DECLARATION OF BRIAN T. FOLEY REGARDING VALUE  
OF CANCELLED STOCK OPTION GRANT**

The undersigned, Brian T. Foley, declares as follows:

**INTRODUCTION**

1. My name is Brian T. Foley. I am the President and Managing Director of Brian Foley & Company, Inc., an executive compensation consulting firm that I founded in 1993 that is based in White Plains, NY.

2. I submit this declaration in my capacity as a nationally known senior executive compensation expert with more than 30 years of experience in advising Boards, Board Compensation Committees, Board Special Committees, senior managements, individual CEOs and other senior executives, outside investors and other interested parties with respect to matters and issues relating to stock option programs, stock option grants, stock option plan and award documents, stock-option-related SEC filing disclosures and other executive compensation and pay-related corporate governance at a wide variety of public companies.

3. In particular, I submit this declaration at the request of the Plaintiff in the above captioned action to summarize my findings and conclusions with respect to the estimated value of the 272,423 share portion of the November 14, 2012 stock option granted to Steven H. Collis ("Collis"), the CEO of AmerisourceBergen Corporation ("ABC"):

- (i) that Plaintiff contends exceeded for 2012 the applicable calendar year grant limit set forth in ABC's Equity Incentive Plan, as amended and restated in 2011 as of January 1, 2011 (the "Plan") (see Exhibit 10.3 to ABC's May 2011 Form 10Q filing); and
- (ii) that ABC's Board and Compensation Committee cancelled on or about August 7, 2013, and that Collis has now reported as cancelled on or about that date -- as evidenced by the Form 4 filings with the SEC made by or on behalf of Collis dated August 9, 2013.

#### **MY BACKGROUND AND CREDENTIALS**

4. A copy of my current bio is attached hereto as Schedule A. I am a graduate of the University of Pennsylvania, Columbia Law School with honors, and the NYU Law School Tax LLM Program. I have worked on executive compensation matters since 1976 -- as an attorney with a major New York law firm between 1976 and 1985, as a senior consultant with two major consulting firms between mid-1985 and early 1993, and as the head of my own executive compensation consulting firm since early 1993.

5. As noted in my bio, I am a frequent speaker at professional and industry conferences and academic symposiums on executive compensation, and, as detailed in my bio, I am frequently cited in print, network TV and cable TV media coverage of major executive compensation stories. I have also recently been named to Thomson Reuters' Super Lawyers list for Metro New York for 2013. And I was earlier listed in Thomson Reuters' October 2010 and October 2011 New York Metro Super Lawyers guides to top New York lawyers, and listed as a top U.S. employee benefits and employment law attorney in Thomson Reuters' November/December 2010 Super Lawyers Corporate Counsel Edition, November/December 2011 Super Lawyers Business Edition and August 2012 Super Lawyers Business Edition.

6. I have, from time to time, testified as an executive compensation expert at trial or deposition or hearing in a number of court cases, including, since October 2002, more than a dozen cases in Federal and State courts in New York, California, Delaware, Florida, Minnesota, Tennessee, Texas and Virginia.

#### **SCOPE OF REVIEW**

7. In connection with the review that I have performed for purposes of this case, I have looked at and taken into account various information, including, without limit, the following items:

- (i) various documents available on the PACER court docket reporting system with respect to this case, including, without limit, the Plaintiff's Verified Shareholder Derivative and Class Action Complaint as entered on February 19, 2013, the Stipulation of Settlement between and among the parties in this case as executed on or about August 15, 2013 and entered on that date, and the Court's August 16, 2013 order;
- (ii) various ABC Plan-related and stock-option-related disclosures in various SEC filings made by ABC, including, without limit, its 2009-2012 Proxy Statements and Form 10K annual reports, and various ABC Form 10Q and Form 8K filings to date (including, without limit, its May 2011 Form 10Q filing regarding the Plan as amended and restated as of January 1, 2011 and its February 25, 2013 Form 8K filing regarding the alleged change in the original 2009 annual per person per calendar year Plan share limit on award grants from 300,000 shares to 600,000 shares);
- (iii) the Form 4 filings filed by or on behalf of Collis in November 2012 and August 2013 with respect to Collis' November 2012 stock option grant on 373,250 shares priced at \$40.21, as reduced on or about August 7, 2013 to an option on 100,827 shares at \$40.21; and
- (iv) the texts of the Plan as initially adopted and shareholder-approved in 2009, and as amended and restated in 2011 as of January 1, 2011 (as reported in ABC's May 2011 Form 10Q filing), and as purportedly further amended in February 2013 retroactive to January 1, 2011 (as reported in ABC's February 25, 2013 Form 8K filing).

8. My review of the items referred to in Paragraph 7 above is ongoing, and I expressly reserve the right to update this declaration if, when and as I see appropriate under the circumstances.

SUMMARY OF FINDINGS/CONCLUSIONS REGARDING VALUE OF CANCELLED OPTION

9. Based on the review I have conducted (as described above) and my 30+ years of experience in addressing, advising on and testifying about executive stock option matters (as also described above), my option valuation findings and conclusions as an executive compensation expert in this matter are as follows:

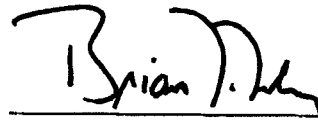
- (a) ABC has not yet reported what it considers to be the fair value per share of the November 14, 2012 grant in question as of the date of the original grant.
- (b) Based on the Black-Scholes method of option valuation, I estimate that the cancelled 272,423 share November 2012 option in question, **as of the time of grant in November 2012**, conservatively had a “fair value” of **at least \$1.93 million**, based on the same valuation assumptions last reported by ABC (in its most recent Form 10K annual report filing with the SEC) with respect to the dividend yield rate, the risk-free interest rate, estimated volatility of the stock price, and the expected average term/like for options granted in FYE 2012.
- (c) **As of August 7, 2013** (the date the option was cancelled by ABC), the actual spread value of the 272,423 share option in question (i.e., the excess of the then current market price over the \$40.21 exercise price, multiplied by the number of shares) **had grown to more than \$5.047 million** (272,423 x \$18.53 per share spread), based on the NYSE reported \$58.74 closing price on that date – more than 2.5x higher than the \$1.93 million estimated value at grant using ABC’s prior assumptions (as set forth in 9(b) above).
- (d) Moreover, the updated Black-Scholes value of the then heavily in-the-money 272,423 share option in question, as of August 7, 2013, would have been **even higher than the more than \$5.047 million actual spread value** noted in 9(c) above on that date, reflecting the estimated value of the remaining potential “play” on the option going forward (since the option would not have expired for another 6+ years), on top of its already-heavily in-the-money status at the time.
- (e) In addition, the 272,423 shares involved in the cancelled November 2012 grant to Collis and returned to the authorized block of shares available for grant under the ABC Plan had, as of the August 7, 2013 cancellation date, a face value of just over **\$16 million** (272,423 shares multiplied by the \$58.74 a share closing price on August 7, 2013). As a result, **ABC, as a practical matter, was in the position, going forward -- after and due to the August 7, 2013 cancellation -- to make additional new grants using shares having a face value of up to \$16 million** (assuming the stock

price stayed flat) if ABC chose to make whole-share grants vs. options, subject of course to the applicable Plan grant limit(s) going forward.

- (f) Even if the 272,423 in recovered shares from the August 7, 2013 cancellation were offset by the number of shares (185,821) involved in ABC's separate new 2013 stock-based awards to Collis – also dated August 7, 2013, the 86,602 net balance of the recovered shares after the cancellation and the new 2013 grant still had a face value of more than **\$5.087 million** as of August 7, 2013.

\* \* \*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief. Executed this 10th of September, 2013 at White Plains, New York.



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# **SCHEDULE A**

## **BRIAN T. FOLEY**

### **MANAGING DIRECTOR BRIAN FOLEY & COMPANY, INC.**

Brian Foley has more than 35 years of experience in providing independent advice on executive compensation and related corporate governance matters to boards of directors, compensation and other board committees and senior managements of major publicly-traded and privately-owned corporations, as well as potential acquirers of, major investors in, and individual senior executives at such companies, and other interested parties.

That experience includes 9+ years as a tax attorney and executive compensation and benefits specialist with the law firm of Lord, Day & Lord in New York; 8 years as a principal and senior U.S. executive compensation and M&A/restructuring consultant – first with Handy Associates in New York and then with the New York office of The Wyatt Company (now Towers Watson); and 20 years as the head of Brian Foley & Company, Inc., an independent executive compensation consulting firm.

Brian's areas of specialty include, among others:

- ▶ the executive compensation issues involved in M&A, IPO, spin-off, ramp-up, down-sizing, turnaround and other restructuring/transactional situations;
- ▶ the governance, process and disclosure issues involved in compensation committee supervision and review of executive cash and equity compensation programs and other executive compensation/benefit arrangements;
- ▶ the structure and negotiation of CEO and other senior executive employment and termination arrangements; and
- ▶ the design, implementation and review/redesign of annual and long-term incentive compensation programs.

Since 1985, Brian has been an outside advisor on executive compensation matters to boards, board committees, senior managements and individual CEOs and other senior executives and investors at Fortune 500 and other large manufacturing companies in the aerospace, apparel, automotive parts, beverage, biotechnology, building materials, chemicals, computer hardware and software, cosmetics, electronics, electrical equipment, food, food-related products, household products, industrial equipment, jewelry, luxury goods, metals, medical products, mining, pharmaceutical, publishing, photographic equipment, recreational equipment, specialty steel, textile and tobacco industries, among others.

During that period, Brian has also advised boards, board committees, senior managements and individual CEOs and other senior executives and investors at Fortune 500 and other large service companies, including, among others, financial services companies

engaged in investment banking, mortgage and other consumer lending, mortgage-backed and asset-backed securities issuance, asset management, securities brokerage, commercial lending and banking, life and property and casualty insurance and other activities; healthcare companies; telecommunications sector companies; office, industrial and hotel REITs and hotel/resort and other real estate development and/or management companies; department store, specialty and other retail companies; wholesale distribution companies; airline, trucking, ocean-going transportation, airlines services and aviation leasing companies; gas and electric utilities; diversified services companies; information processing and other business services companies; advertising, public relations and other communication companies; various internet-related companies; and various internet-based, direct mail and other marketing companies.

In addition to providing advice with respect to a number of major publicly-traded corporations, Brian has also advised with respect to key employee annual, retention and equity-based incentives in privately-held companies, joint ventures, partnerships, and REITs, and in various professional, consulting and other business service firms, as well as in a variety of special contexts including special investigations, bankruptcy trustee, crisis manager and management compensation, and not-for-profit entity key employee compensation.

Brian has also provided advice as a consulting expert, and/or testified as a testifying expert, on executive compensation issues in a number of major lawsuits (in various Federal and state courts) as well as various arbitration and settlement proceedings.

Brian has also spoken before a number of professional, business and academic groups on a wide range of strategic, design, disclosure and technical issues and corporate governance concerns relating to executive compensation.

Brian has been quoted on numerous occasions on executive compensation and related governance issues in stories appearing in major print publications including, among others, *The New York Times* (105+ articles since January 2002), *The Wall Street Journal* (50+ articles since January 2002), *The Washington Post*, the *Los Angeles Times*, numerous other major U.S. regional or metropolitan newspapers, *Fortune*, *Forbes*, the *Financial Times*, *The International Herald Tribune*, *The Times (London)*, the *Frankfurter Allgemeine Zeitung*, and various other print publications outside of the U.S.

He has also provided commentary on executive compensation and related governance developments in connection with numerous broadcast and cable news reports, including reports appearing on *The CBS Sunday Evening News*, *CBS News Sunday Morning*, NBC's *Today Show*, the PBS *NewsHour*, CNN's *Erin Burnett OutFront* and *Lou Dobbs Tonight* programs, CNBC-TV's *Squawk Box*, *Morning Call*, *Squawk on the Street*, *The Call*, *Power Lunch*, *Street Signs*, *Open Exchange*, *Closing Bell*, *Business Center*, *On the Money*, *CNBC Reports* and *The Kudlow Report* programs, numerous Bloomberg TV business news programs, Fox News' *Your World with Neil Cavuto*, Fox Business News' *Morning Call*, the BBC's *World Business Report*, National Public Radio's *Morning Edition* and *All Things Considered* programs, MPR's *Marketplace Morning Report*, CBS News Radio (Los Angeles), ABC Radio News and Bloomberg Radio.

Brian's commentary has also appeared in numerous news reports appearing on ABCNews.com, the AP, Reuters, Dow Jones, Bloomberg, Bloomberg Businessweek and Knight-Ridder Tribune news wires, and on Time.com, Forbes.com, CNN/Money.com, CFO.com and elsewhere.

Brian is a graduate of the University of Pennsylvania, Columbia Law School (where he was a Harlan Fiske Stone Scholar), and the L.L.M. tax program at New York University Law School. He is a member of a number of professional organizations and groups, including, among others, the American Bar Association and the New York State Bar Association.

Brian is listed in Thomson Reuters' October 2010 and October 2011 New York Metro Super Lawyers guides to top New York lawyers, and has also been recently selected for inclusion in the 2013 New York Metro guide. He is also included in the listings of top U.S. employee benefits and employment law attorneys in various Thomson Reuters Super Lawyers national editions, including the November/December 2010 Super Lawyers Corporate Counsel Edition, the November/December 2011 Super Lawyers Business Edition and the August 2012 Super Lawyers Business Edition.